Legal Issues with FRGs

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AGENDA

- Introduction
- Purpose
- References
- FRG – What is It?
- Fundraising
- Miscellaneous Issues
- Conclusion/Questions

INTRODUCTION

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Background

- Army: 1990 – 2003
- ANG: 2003 – present
- Ethics/Fiscal: 2002 – present

PURPOSE

To provide conference attendees with an overview of the legal and Ethical framework impacting Family Readiness Groups (FRGs) and non-Federal entities (NFEs), with a focus on fundraising.

REFERENCES

- E.O. 12731
- Title 31 U.S. Code
- 10 U.S. Code § 1588
- 5 C.F.R. § 2635
- DoDD 5500.7
- DoD 5500.7-R (*Joint Ethics Regulation)*
- AR 608-1
- NGR 600-12
- Policy memos

REFERENCES

E.O. 12731

- Fourteen Principles of Ethical Conduct
- Created because of Watergate and other government scandals
- Common sense expectations of conduct as government employee
- *Normally does not apply to family members.*

REFERENCES

Joint Ethics Regulation (JER)

- DoD supplement to Ethics laws/regulations
- Applies to “DoD employees”
- Broad application

REFERENCES

“DoD Employee”

- Active Duty - Regular or Reserve Officers
- Active Duty enlisted members
- DoD civilians (including NG technicians)
- Reserve or National Guard on Title 10 active duty (e.g., AGR program)
- Reserve or NG performing official duties or functions under Title 10 or 32, or while engaged in any activity related to the performance of such duties or functions.

WHAT IS A(N) FRG?

A. The military abbreviation for “frog.”

B. The Federal Republic of Germany.

C. A group of National Guard members, family members, and volunteers, officially supported by the command, whose primary goal is to promote and support National Guard families.

D. A private organization, or non-Federal entity (NFE), comprised of National Guard members, family members, and others, whose primary goal is to promote and support National Guard families.

E. B, C, and D only.

F. C and D only.

G. A only.

“OFFICIAL FRG”

- Governed by service regulations.
- Receives official support and endorsement by the command.
- Receives government funding (appropriated funds).
- Authority to accept services of “statutory” volunteers under 10 U.S.C. § 1588.
- Operate on military installations without red tape.

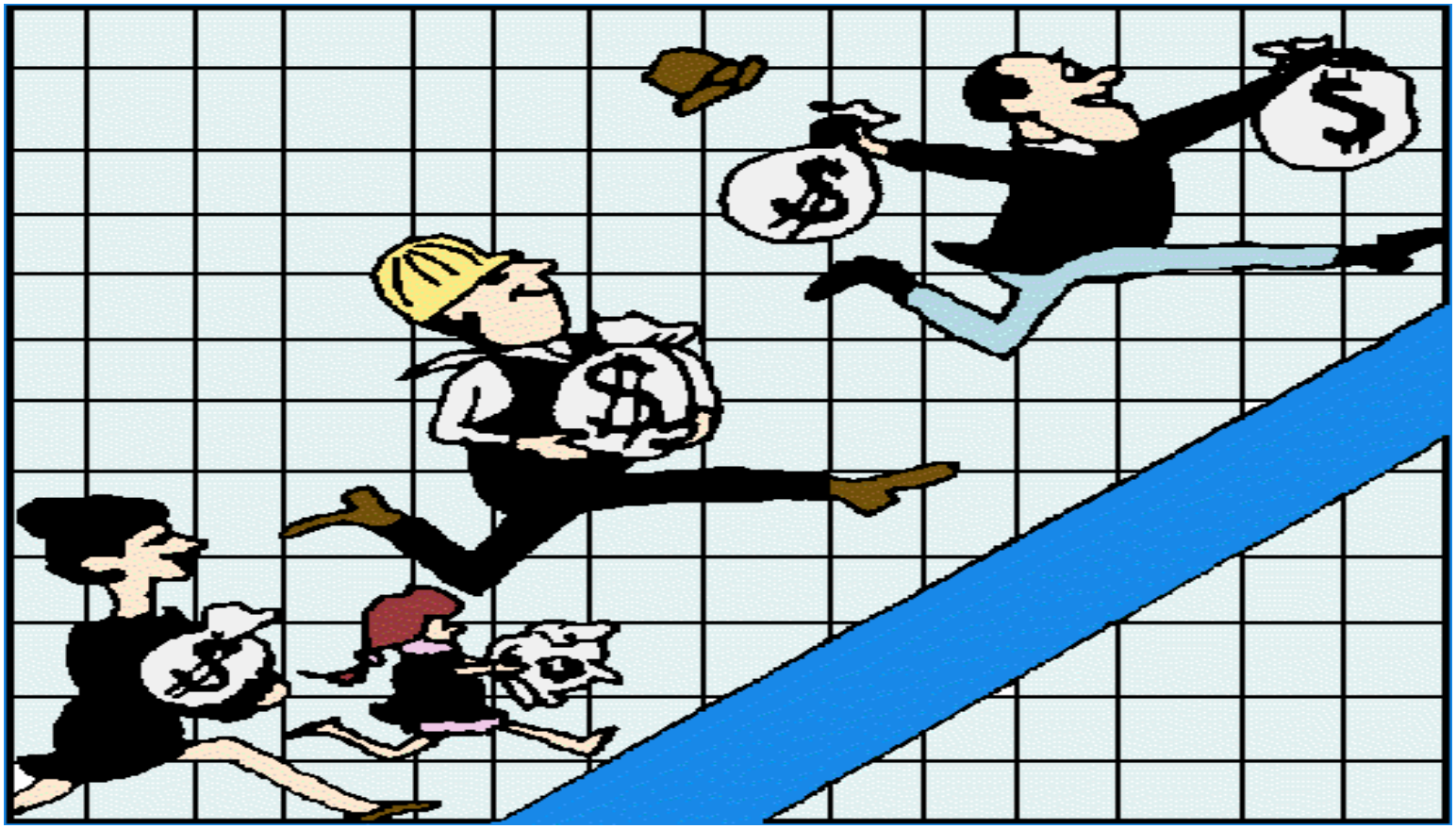
“UNOFFICIAL FRG”

- Technically not an “FRG.”
- **Is considered a private organization, or “NFE.”**
- Consists of . . . anybody.
- Is privately funded – no government funds.
- Gets no official support or endorsement – generally.
- Operates on military installations only after complying with certain service procedures.

THE FRG SCHISM

- Two separate organizations with the same members!
- Vastly different rules!
- Chaos!

Let’s talk about fundraising . . .



Key Concept

- **Fundraising is like Alcohol**
  - Almost everyone likes it.
  - It gives you a warm feeling inside.
  - Some people never get enough.
  - It's legal, but worrisome.
  - It causes people to do things to their co-workers or friends that they would not normally do.

FUNDRAISING

OFFICIAL FRG

- An “official” FRG may not supplement its official funding.
- Article I, Section 9, Clause 7, U.S. Constitution:

  “No money shall be drawn from the treasury except in consequence of appropriations made by law.”

- 31 U.S. Code § 3302(b) – Miscellaneous Receipts
- Bottom Line – you can only spend what Congress gave ya!
- The government does not beg for money!

FUNDRAISING

OFFICIAL FRG

- Official FRG (government) can accept certain things:
  - Volunteer services (10 U.S. Code § 1588).
  - Gifts, with proper approval and statutory authority.
- Money – usually not. Even if yes, must deposit in the Treasury.

FUNDRAISING

UNOFFICIAL FRG (NFE)

- Fundraising for family activities done exclusively by “unofficial FRG.”
- This fundraising is done by an NFE, a private organization. No government rules apply to private fundraising.
- However, there are issues

FUNDRAISING

UNOFFICIAL FRG (NFE)

Why are there issues?

- Unofficial FRGs incorrectly perceive themselves as an official arm of the Guard.
- Unofficial FRGs want things from the Guard:
  - Equipment
  - Personnel
  - Facilities
  - Official endorsement and support
  - Special access to Guard members

FUNDRAISING

UNOFFICIAL FRG (NFE)

Status (rehash)

- Official FRG can’t fundraise – it’s a government entity.
- Have limited authority to get outside people and stuff.
- Confusing because both “official” and “unofficial” have same membership.

FUNDRAISING

UNOFFICIAL FRG (NFE)

"Lt Col Serrano, what can the "Unofficial FRG" do to get support from the Guard during fundraising efforts?"

FUNDRAISING

UNOFFICIAL FRG (NFE)

Use of Equipment

- JER para. 3-211 permits the Guard to support NFE fundraising with equipment.
- Must be “limited” support.
- Tent, light sets, generators, etc., with operators.
- NO LABOR!!!!
- Seven-part test.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Use of Personnel

- JER para. 3-211 permits the Guard to support NFE fundraising with speakers and panel members.
- Can’t be “headliner” for fundraiser.
- Can’t solicit for the organization.
- Can’t endorse it.
- Can give official policy speech.
- Seven-part test.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Official Endorsement

- Guard officials may not endorse NFE fundraiser in official capacity.
- Limited circumstances of endorsement (more later)
- Can endorse in personal capacity (senior officials be careful).
- Can't imply official endorsement by using "FRG" name, Guard name, or unit name.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Fundraising on the Installation

- Special endorsement exception in the JER for “by us, for us” fundraising.
- Can get official endorsement of the fundraiser.
- Can’t be done in the “workplace.”
- Can’t use these special rules to get official endorsement of off-post fundraising.
- In-kind donations – exception.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Miscellaneous Rules

- Advertising a fundraiser
  - JER 3-208 – may use official communication media to inform personnel of “events of common interest.”
  - Can’t embellish or endorse unless exception exists.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Miscellaneous Rules (cont.)

- Can’t force people to participate or donate.
  - No lists of donees
  - No retribution for those who don’t give.
  - No special gifts for donees like time off.
  - No repeated formations or orientations.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Miscellaneous Rules (cont.)

- Fundraising methods off the installation – anything goes (follow local law).
- On-installation fundraisers – must follow regulations regarding gambling
  - Some services permit lotteries, some not.

FUNDRAISING

UNOFFICIAL FRG (NFE)

Miscellaneous Rules (cont.)

- What is “gambling?”
  - Consideration.
  - Game of chance.
  - Offering of a prize.
- Serrano’s advice – stay away from gambling!
  - Remove one element – e.g., use donation instead of required consideration.
  - Do silent auction, bake sale, other stuff.

FUNDRAISING

Does your head hurt yet?

FUNDRAISING

UNOFFICIAL FRG (NFE)

Miscellaneous Rules (cont.)

- Solicitation can be a problem because of gift rules and solicitation rules for Guard members.
- Family members not affected by rules but Guard members are
- Exceptions may allow gift acceptance.
- Wartime gift issues.

CONCLUSION

- FRG practically is two groups, one “Official,” one “Unofficial.”
- Rules for actions of two groups are vastly different.
- Need to remain mindful about what group is doing what when.
  - Official FRG can’t fundraise or supplement government funds.
  - Unofficial FRG can do what it wants but official support is limited.

Questions ?